

Will Enjoins Heirs to Perpetual Retouching of Painted U. S. Flag

(Special to the Transcript)

Duxbury, Feb. 11—When the late George Higgins returned to his native town of Duxbury after serving in the Union army during the Civil War, he painted an American flag on the side of his corn crib on the Duxbury shore road as a symbol of his patriotism. Every year since then the flag has been repainted, for when he died he enjoined on his heirs the duty of carrying on the custom.

But now his two surviving heirs, who wish to sell the property, have petitioned the Plymouth Probate Court for an interpretation of his will, which specifically provides that the maintenance of the painted flag be carried on indefinitely.

"As I faithfully served my country in the War of the Rebellion," Higgins said in his will, "it is my desire and request that the American flag which is now painted upon my corn house be kept well painted, and as new States may be added to the Union, new stars be placed in proper order as by pattern shown and may be found in my tool chest."

In bequeathing his estate to his three daughters and his stepson, Higgins wrote:

"To my three daughters, Lucy F. Hig-

gins, Rosalie R. Garland and Sara E. Higgins and to my stepson, Charles M. Hayden, all of my homestead property including the land and all the buildings that belonged to me thereon, also all of my farming tools, for their use and benefit so long as they may live, and it is my expressed wish and desire that no part of the real estate be disposed of except by an agreement of a majority of the heirs. And that when either of the above-mentioned heirs may die, that their part shall revert back to the estate. As it is my desire that the old homestead may be kept in my name so long as it may be possible."

Rosalie R. Garland died before her father, and Lucy P. Higgins some time later. It has already been decided by the Probate Court that the word "heir" as used in the will does not refer to the grandchildren, but to the four people to whom the homestead was given for life. The two surviving life tenants are desirous of selling, but they "are unable to satisfy a prospective buyer that they have the authority to do so under the provisions of the will."

The petitioners wish the court to give them instruction as to their powers and construction of the meaning of their power to sell under "an agreement of a majority of the heirs."